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*Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108*

Advisory Opinion

September 21, 2001
AO-01-22

Ira Fader, President
Susan Lee Weissinger, Secretary
Massachusetts Association of Teacher Attorneys
20 Ashburton Place
Boston, MA 02108

Re: Political activity by employees of labor organization

Dear Mr. Fader and Ms. Weissinger:

This letter is in response to your September 7, 2001 request for an advisory opinion. You have asked about the “liability for employers for the off-duty, private political activity of employees” of a labor organization under the Massachusetts campaign finance law, M.G.L. c. 55.

You have stated that you are officers of the Massachusetts Association of Teacher Attorneys (MATA), a labor organization representing an eight-member bargaining unit of attorneys. MATA members are employed by the Massachusetts Teachers Association (MTA), and work in its Legal Services Division representing MTA members and affiliates in assorted legal matters. MTA is a public sector labor organization with over 350 local affiliates representing teachers, professors and educational support personnel. In addition to the many activities that it conducts as a union, MTA has a political action committee and engages in the political and electoral processes by endorsing candidates for state and national office and, in some instances, by making independent expenditures on behalf of certain candidates. As employees of MTA, MATA members are not public employees, and are not registered as lobbyists or directly involved in MTA’s political or electoral activities.

Question:

You have stated that your “basic question”¹ is whether there is “any liability to the MTA for political or electoral activities that MATA members might engage in as private citizens, *not* as MTA employees.”

¹ You have also identified a number of additional questions regarding specific hypothetical facts. Although some of your specific questions will be answered below, I have not attempted to answer each specific question in the form and order you

Answer

No. The campaign finance law would not attribute the political activities of attorneys employed by MTA on their own time and on their own initiative, which do not involve the use of MTA resources, to MTA. If, however, a MTA employee who provides services to a candidate or committee also participates in MTA's identification, authorization, or any other aspect of MTA's decision making process concerning which candidates or committees the MTA should support, such involvement by the employee may cause expenditures by MTA to be considered "contributions" rather than independent expenditures.

Discussion

Voluntary work provided by MTA employees on their own time and not as a condition of their employment to a candidate or political committee, and any expenses incidental thereto would not be a "contribution" by the employees. Instead, it would be a "personal service" provided to the candidate or committee. See M.G.L. c. 55, § 1, which excludes, from the definition of "contribution," "the rendering of services by speakers, editors, writers, poll watchers, poll checkers or others, [and] the payment by those rendering such services of such personal expenses as may be incidental thereto." Personal services are not "contributions" within the scope of the campaign finance law and are not subject to the \$500 limit on contributions from individuals to candidates, and do not need to be reported by a candidate or committee on campaign finance reports filed with this office. See AO-98-17 and AO-93-32. Where a lawyer employed by MTA provides legal services on his own initiative and on his own time to a candidate or committee the lawyer is providing a personal service, not a contribution.

In AO-01-02, the office advised that a corporate employee could provide political services for a political committee without such services being considered a contribution by the corporation to the committee. In that opinion, we noted that a corporate employee could provide services to a committee on her own time without causing a contribution to be made from the corporation, if the providing of such services is not made as a condition of her employment at the corporation. In addition, we stated that the corporation must accommodate the employee's provision of services in a manner consistent with the corporation's normal employment practices.

Similarly, a union would not be deemed to make a contribution simply because its members provide services on their own time to a committee or candidate. Based on your letter, we are aware of no facts indicating that MATA employees would be directed by MTA to provide political services. Therefore, the activity should not be imputed to MTA and it would have no impact on the separate activities of MTA. If, however, the services provided to a campaign by MTA employees were required as a condition of their employment, a contribution would have been made. See clause (3) of the definition of "contribution" in section 1 of chapter 55, which includes, in the definition, any "payment, by any person other than a candidate or political committee, or compensation for the personal services of another person which are rendered to such candidate or committee."

MTA may decide to make an in-kind contribution or independent expenditure to support the candidate or committee supported by MATA attorneys. *It is important to note, however,* that if a MATA attorney or other MTA employee who provides services to a candidate or committee also participates in MTA's identification, authorization, or any other aspect of MTA's decision making process concerning which candidates or committees the MTA should support, such involvement by the MTA employee could call into question the independence of MTA's expenditures and may result in such expenditures being considered "contributions" subject to the limits of the campaign finance law.

The law does not require the MTA to direct its employees to refrain from all political activity on behalf of a candidate supported by MTA to avoid the appearance of coordination between the MTA and the candidate.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter. Please contact us if you have further questions regarding this opinion or any other campaign finance issue.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Sullivan". The signature is written in dark ink and is positioned to the left of a vertical line.

Michael J. Sullivan
Director